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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/309,128	05/10/1999	GAYLE MARIE FRANKENBACH	7258XR	7129

27752 7590 03/05/2002

THE PROCTER & GAMBLE COMPANY  
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CINCINNATI, OH 45217

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

14

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/309,128

Applicant(s)  
Frankenbach et al.

Examiner  
John R. Hardee

Art Unit  
1751



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 17, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 15-18, and 26-30 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 15-18, and 26-28 is/are rejected.
- 7) ☒ Claim(s) 29 and 30 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

Art Unit: 1751

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's cancellation of claims drawn solely to non-elected inventions is noted with appreciation. However, the remaining claims contain language drawn to these non-elected inventions. No claims can pass to issue until language reciting the non-elected softeners and stabilizers has been deleted from the claims.

When indicating allowable subject matter in the previous office action, the examiner may not have made it clear that a non-zero percentage of the principal solvent had to be present in the compositions which were indicated to be allowable.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-5, 7, 15-18 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker et al., US 5,545,350. See Example IX-1, col. 31. The G' and G'' limitations appear to be met. The phase transition limitations appear to be met, as the exemplified diester quat reads on those recited by applicant. As all of the limitations of the claims have been met, this disclosure constitutes anticipation.

Art Unit: 1751

***Claim Rejections - 35 USC § 103***

4. Claims 1-5, 7, 15-18 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al., US 5,545,350. The reference discloses compositions comprising DEQA fabric softening actives and highly ethoxylated nonionic surfactants. Viscosity modifiers may be added to lower the viscosity of the molten DEQA (abstract). Note Example IX-1, which anticipates the claims. While none of the recited principal solvent is present, it appears that none is necessary to meet the recited limitations. Accordingly, an effective amount would be zero. Even if the exemplified composition does not meet the recited limitations, it would have been obvious at the time the invention was made to manipulate the viscosity of the compositions, because this is disclosed in the reference.

***Allowable Subject Matter***

5. Claims 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and provided that language drawn to non-elected softeners and stabilizers is deleted from the claims.

6. The following is a statement of reasons for the indication of allowable subject matter:  
These claims recite the presence of a non-zero percentage of the principal solvent, as well as a

Art Unit: 1751

non-zero amount of the elected stabilizer in combination with the elected fabric softener. This combination is not disclosed by or obvious over the prior art of record.

7. This action contains a new ground of rejection not motivated by applicant's amendments. Accordingly, this action is NOT FINAL.

8. Applicant is advised to review the other references cited with this action, as they contain many examples which read on applicant's claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



John R. Hardee  
Primary Examiner  
March 1, 2002